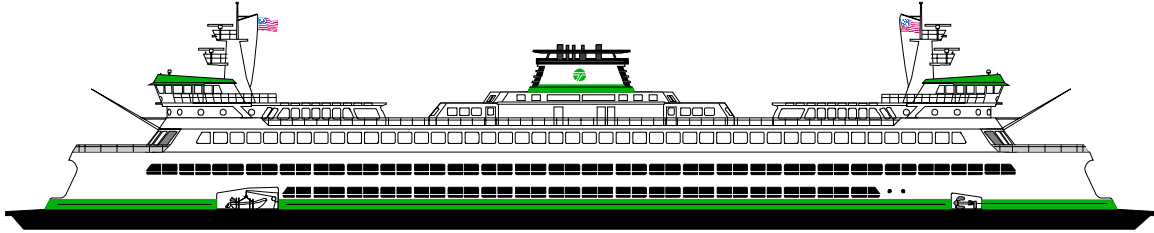


PART 10

CONTRACTS



WASHINGTON STATE FERRIES

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

HOT BEVERAGE AND SNACK VENDING CONCESSION CONTRACT

JANUARY 2004

WASHINGTON STATE FERRIES

HOT BEVERAGE AND SNACK VENDING CONCESSION CONTRACT

JANUARY 2004

WASHINGTON STATE FERRIES
HOT BEVERAGE AND SNACK VENDING
CONCESSION CONTRACT

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WASHINGTON STATE FERRIES

HOT BEVERAGE AND SNACK VENDING CONCESSION CONTRACT

1 **THIS CONTRACT** is made and entered into this ____ day of _____,
2 2003, between **WASHINGTON STATE FERRIES**, a division of the Washington State
3 Department of Transportation (hereinafter called "**WSF**") and
4 _____, an independent contractor (hereinafter
5 called the "**CONCESSIONAIRE**").

6 7 **WITNESS THAT:**

8
9 **WHEREAS**, **WSF** owns and operates the largest ferry system in the United States,
10 including twenty-four (24) auto ferries and five (5) passenger-only ferries serving twenty
11 (20) terminals in Puget Sound, Washington and Sidney, British Columbia, all as an integral
12 part of the Washington State highway system; and

13
14 **WHEREAS**, **WSF** desires to contract with a qualified **CONCESSIONAIRE** to
15 provide the following services on-board **WSF** vessels and at its terminals: hot beverage and
16 snack vending service; and

17
18 **WHEREAS**, pursuant to authorization in Revised Code of Washington (RCW)
19 47.60.140 and 47.56.030, **WSF** sought competitive proposals for such concession service
20 and, following evaluation of _____ (____) proposals, selected the **CONCESSIONAIRE'S**
21 Proposal as the one most advantageous to **WSF**; and

22
23 **WHEREAS**, the **CONCESSIONAIRE** is duly authorized and qualified to provide
24 the desired concession service and has signified its capability and willingness to provide such
25 service as an independent contractor in accordance with (i) the terms of this Contract; (ii) the
26 **CONCESSIONAIRE'S** Financial Proposal, by this reference incorporated herein as Exhibit
27 "A"; (iii) the **CONCESSIONAIRE'S** Concept / Service Proposal, by this reference

1 incorporated herein as Exhibit "B"; and (iv) **WSF's** project Request For Proposals, including
2 all Addenda thereto (hereinafter called "RFP") by this reference incorporated herein as
3 Exhibit "C".
4

5 **NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and
6 performances contained herein or attached, incorporated and made a part hereof, the parties
7 hereto agree as follows:
8
9

10 **I.**
11 **DESCRIPTION OF PREMISES**
12

13 A. **WSF** hereby allocates to the **CONCESSIONAIRE**: (i) certain concession space at
14 **WSF**-approved locations aboard vessels owned and operated by **WSF**; and (ii)
15 certain concession space at **WSF**-approved locations at terminals owned (or leased)
16 and operated by **WSF**, all as more specifically described below. The amount of
17 concession space allocated to the **CONCESSIONAIRE** will vary from location to
18 location depending on available space and market conditions. All such concession
19 space is subject to pre-approval in writing by **WSF**. The actual concession spaces
20 approved by **WSF** at all such **WSF** locations, both individually and collectively, are
21 hereinafter referred to as the "Concession Premises". For a list of the existing
22 Concession Premises with hot beverage and snack vending machines, please see RFP
23 Volume II, Exhibits.
24

25 1. **Vessels**

26 The vessel Concession Premises shall consist of:

- 27 • Hot beverage vending machine space aboard fifteen (15) **WSF** vessels
28 equipped with such vending machines and any other **WSF** vessels
29 subsequently equipped with such machines, including but not limited to,
30 up to four (4) replacement auto / passenger vessels to be constructed
31 during the term of this Contract.
- 32 • Snack vending machine space aboard **WSF'S** existing twenty-three (23)
33 vessels equipped with such vending machines and any other **WSF** vessels
34 subsequently equipped with such machines, including but not limited to,

1 up to four (4) replacement auto / passenger vessels to be constructed
2 during the term of this Contract.
3

4 2. **Terminals**

5 The terminal Concession Premises shall consist of:

- 6 ■ Hot beverage vending machine space at four (4) **WSF** ferry terminals.
- 7 • Snack ending machine space at eight (8) **WSF** ferry terminals.
- 8

9 B. Upon the **CONCESSIONAIRE'S** request, **WSF** shall provide any necessary
10 clarification regarding components of the vessel and terminal Concession Premises.
11

12 C. Upon the **CONCESSIONAIRE'S** request, **WSF** may, in its sole discretion, allocate
13 and authorize (i) an expansion of the vessel and/or terminal Concession Premises,
14 subject to space availability and approval in writing by **WSF**.
15

16 D. **WSF**, may, upon fifteen (15) days' prior written notice, reduce, increase, eliminate, or
17 otherwise change any of the Concession Premises allocated to the
18 **CONCESSIONAIRE** if **WSF** determines that such modification is necessary in
19 order to meet **WSF** operational requirements or better serve the traveling public.
20

21 E. The **CONCESSIONAIRE** accepts the Concession Premises in their present
22 condition, after removal of trade fixtures and other personal property of **WSF'S**
23 predecessor food service concessionaire (at the Colman Dock and Anacortes Ferry
24 Terminals). The condition of the Concession Premises shall be verified by the
25 **CONCESSIONAIRE'S** inspection of the Premises prior to the commencement of
26 this Contract.
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IV.
INDEPENDENT CONTRACTOR

- A. The parties declare that the **CONCESSIONAIRE** and its employees, while performing this Contract, are acting as independent contractors and not in any manner as officers or employees of **WSF**. Any and all claims that might arise under any Workmen's Compensation Act, Jones Act or Longshore and Harbor Worker's Act on behalf of such employees or other persons under the **CONCESSIONAIRE'S** direction or control, while performing any of the work or services described herein, shall be the sole obligation and responsibility of the **CONCESSIONAIRE**.
- B. As an independent contractor, the **CONCESSIONAIRE** shall coordinate with **WSF** on issues affecting **WSF** operations and maintenance, as specified herein and in the RFP, such as, but not limited to: transitioning from the former concessionaire, scheduling issues regarding customer service, construction or remodeling, financial and sales reporting, and product storage. While agreeing to coordinate with **WSF**, the **CONCESSIONAIRE** shall remain solely responsible for its employee relations as well as its own labor relations, as required by law. Therefore, this agreement to coordinate efforts shall not create a joint-employer relationship between **WSF** and the **CONCESSIONAIRE**, or any subcontractor, franchisee, or licensee operating under this Contract.

V.
EXCLUSIVE FRANCHISE

- A. Subject to the provisions in Paragraph C below, the **CONCESSIONAIRE** shall have the exclusive right to provide: the hot beverage and snack vending service on the vessel and terminal Concession Premises, as follows:
1. Rights to install and manage the hot beverage and snack vending machine service at the designated vessel and terminal Concession Premises.

4. Obtain **WSF's** approval for the **CONCESSIONAIRE'S** proposed beverage menu, customer prices and product quality, for all concession services, prior to commencement of operations under this Contract. Beverage products must be first quality and meet all applicable Health Department regulations.
5. Service, clean and keep the vending machines well stocked so as to maximize the customer's experience and the **CONCESSIONAIRE'S** gross revenues.
6. Provide exceptional customer service combined with the goal of achieving business success. The **CONCESSIONAIRE** shall tailor concession concepts, capital investments, and staff levels to meet varying business needs and hours of service.
7. Adhere to **WSF's** street pricing requirement. The **CONCESSIONAIRE** and **WSF** will select three (3) sites providing comparable products and services. After the initial pricing approval, **WSF** may review such products, services, prices, quality, etc. then in effect and if they do not fall within the range of the comparable facilities, **WSF** will require adjustments.
8. Ensure that deliveries to and from the Concession Premises are done in a manner and at times that will minimize interference with **WSF** vessel and terminal operations. The **CONCESSIONAIRE** shall ensure that delivery vehicles do not park at terminals longer than the actual time required for pick-up and delivery.
9. Comply with: (i) all federal, state and local statutes, ordinances, regulations and rules pertaining to the **CONCESSIONAIRE'S** operations hereunder, including but not limited to applicable Washington State Department of Health rules, regulations and standards; and (ii) all proper orders of authorized federal, state and/or municipal officers.

10. Coordinate with **WSF'S** authorized representative: (i) concession operational requirements; (ii) Contract compliance; and (iii) other administrative requirements, as needed, to ensure smooth operation of the concession services. Such coordination is important to avoid any potential conflict with **WSF** terminal and vessel operations or with **WSF** customers.

VII.

HOURS OF OPERATION AND MARKETING

A. Hours of Operation

The **CONCESSIONAIRE’S** vending machines shall be operable and available to **WSF** customers at all times, especially when the vessels and terminals are open to the public.

B. Operating Plan

1. On an annual basis during the term of this Contract, the **CONCESSIONAIRE** shall submit to **WSF** a proposed operating plan to include its proposed services for the upcoming year. **WSF** may approve the plan as submitted, or seek agreement on adjustments thereto. The **CONCESSIONAIRE** shall develop its operating plans at its sole expense.
2. If the parties cannot agree on an annual operating plan, **WSF** may direct the **CONCESSIONAIRE** to implement an alternative plan affecting products, services and/or prices. If the **CONCESSIONAIRE** is unable or unwilling to comply with such direction, **WSF** may immediately terminate the **CONCESSIONAIRE'S** rights to the specific concession service under review. Thereafter, **WSF** may contract with a third party for alternative beverage service at the affected service location(s), if **WSF** deems appropriate for its customer service. In such event, **WSF** shall not be liable to the **CONCESSIONAIRE** for any damages whatsoever, and the concession fees payable under this Contract shall be effective for the remaining concession services under this Contract.

1
2 **C. Marketing Plan**

3 On an annual basis during the term of this Contract, the **CONCESSIONAIRE** shall
4 submit to **WSF** a proposed marketing plan, to include a promotions calendar and
5 seasonal marketing concepts. **WSF** may approve the plan as submitted or seek
6 agreement on adjustments thereto. The **CONCESSIONAIRE** shall develop all such
7 annual marketing plans at its sole expense.
8
9

10 **VIII.**
11 **IMPROVEMENTS TO PREMISES**
12

13 **A. The CONCESSIONAIRE shall:**
14

- 15 1. Be responsible for the construction of all capital improvements, furniture and
16 fixtures necessary to bring all Concession Premises and facilities into a fully
17 operable condition.
18
- 19 2. Upon **WSF's** request and / or approval, make capital improvements to the
20 Concession Premises. The capital improvements are defined in Paragraphs B
21 and C of this Article, and shall become **WSF's** property upon construction or
22 installation. Design and finish materials for all capital improvements must be
23 pre-approved by **WSF**. Additionally, **WSF** must perform engineering studies
24 for equipment installation on the vessels prior to vessel modification. **WSF**
25 will stringently control changes in the **CONCESSIONAIRE'S** on-board
26 vending equipment.
27
- 28 3. Obtain **WSF'S** approval of proposed modifications to the Concession
29 Premises prior to initial design and construction, and thereafter make no
30 alterations without **WSF's** prior, written approval. All such alterations
31 (excluding the vending machines) shall become part of the Concession
32 Premises, and shall become **WSF's** property upon the expiration or earlier
33 termination of this Contract unless otherwise provided in a written agreement
34 between the parties.
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4. Be responsible for the procurement, installation and maintenance of improvements (including vending machines and other equipment, fixtures and furnishings) to the Concession Premises, except any improvements which **WSF** has previously or hereafter agreed, in writing, to provide, install and/or maintain. In purchasing such improvements or operating inventory, the **CONCESSIONAIRE** shall not use the name or credit of **WSF**. All vending machines procured and installed by the **CONCESSIONAIRE** shall remain the **CONCESISONAIRE’S** property upon the expiration or earlier termination of this Contract unless otherwise provided in a written agreement between the parties.
5. Annually, on a mutually agreeable schedule, submit to **WSF** a complete written inventory of all vending machines installed on, and improvements made to, the Concession Premises during the preceding calendar or fiscal year. **WSF** shall have the right to tag its property for inventory purposes.
- B. The capital improvements described herein include, but are not limited to: furnishings and decor items; remodeling (structural, electrical, plumbing, etc., including any necessary code compliance work); signage; and any other improvements approved in advance by **WSF**.
- C. The capital improvements described herein do not include the cost of: (i) operating or other inventory (e.g., vending machines, change machines, tools, expendable equipment), except as otherwise approved by **WSF**; and (iii) personal property of the **CONCESSIONAIRE** which is removable without causing damage to the Concession Premises or any other **WSF** property or facilities thereon, and which the **CONCESSIONAIRE** is entitled to remove under Article XXX.A.2. herein.
- D. All facilities and vending machines on the terminal Concession Premises must be designed to meet all local, state, and federal building code requirements; and all such facilities and machines on the vessels and terminal Concession Premises must comply with the Americans with Disabilities Act standards.

IX.
PERSONNEL

A. The **CONCESSIONAIRE** shall:

1. Provide adequate personnel to service the vending machines so as to have a reasonable selection of products available to waiting customers. Such personnel shall: (i) remain the employees of the **CONCESSIONAIRE** only; and/or (ii) be subject to the **CONCESSIONAIRE'S** exclusive supervision, direction and control.
2. Ensure that its concession personnel provide courteous and efficient service at all times. Such personnel shall conduct themselves in a proper manner at all times while on the Concession Premises or other **WSF** property, with a high regard for their own safety and for the comfort and safety of all others on such Premises or property.
3. Require its employees working on-board a **WSF** vessel to abide by: (i) all rules and regulations of the State of Washington and the United States Coast Guard (USCG) governing the **CONCESSIONAIRE'S** employees while on duty aboard such vessel; and (ii) all proper orders by authorized personnel issued pursuant to such rules and regulations. The **CONCESSIONAIRE** shall be solely responsible for ensuring that all of its employees working aboard **WSF** vessels have current and valid Z cards issued by the USCG.
4. Ensure that its employees, while on duty, wear clean, neatly pressed attire appropriate for the services provided. The cost of such uniforms, including laundering, shall be the sole responsibility of the **CONCESSIONAIRE** and/or its employees.

B. **WSF** reserves the right to approve, in advance, the suitability of all **CONCESSIONAIRE** management personnel assigned to the concession operations under this Contract. The **CONCESSIONAIRE** shall notify **WSF** in advance of the transfer of any on-site management personnel assigned to this Contract.

1 C. Safety and security are a primary concern on **WSF** vessels, at its terminals and in the
2 vehicle holding areas. With the increased emphasis being placed on security by our
3 nation, **WSF** has established safety and security procedures and expects that security
4 measures and attendant procedures in particular will change over the term of this
5 Contract. These changes may affect the **CONCESSIONAIRE'S** operations and
6 employees. **WSF** will make reasonable efforts to minimize negative business impacts
7 to the **CONCESSIONAIRE** when possible. Some specific considerations include:
8

- 9 1. **WSF** training is meant to augment, not supplant, the **CONCESSIONAIRE'S**
10 own efforts in training and maintaining proper safety and emergency
11 procedures for its employees.
12
13 2. To the extent that any federal, state or local rule or regulation requires safety
14 or security training for the **CONCESSIONAIRE'S** employees, the
15 **CONCESSIONAIRE** shall be solely responsible for securing such training
16 and the costs related thereto.
17

18 **X.**
19 **MAINTENANCE AND REPAIRS**
20

21 A. The **CONCESSIONAIRE** shall:
22

- 23 1. Maintain all Concession Premises and operating equipment in a clean and
24 sanitary condition to **WSF's** satisfaction.
25
26 2. Pick up and dispose of all paper, trash, garbage, and other waste on the
27 Concession Premises, and make arrangements for prompt and sanitary
28 disposal of all such waste. The **CONCESSIONAIRE** shall not dump any
29 waste into Puget Sound or adjacent waters under any circumstances.
30
31 3. Be solely responsible for maintenance and repairs to the Concession Premises
32 and the facilities and vending equipment thereon, including, but not limited to,
33 vending and change machines, windows, doors partitions, equipment, fixtures,
34 floor coverings, ceiling tiles, furnishings, signs, lighting and plumbing.
35 Promptly carry out such work so as to: (i) keep the Concession Premises and
36 facilities thereon in good order and repair; and (ii) minimize any adverse

1 affect on Terminal patron safety. This provision does not apply to any
2 maintenance or repairs that **WSF** has previously or hereafter agreed to, in
3 writing, to be responsible for.
4

5 4. Maintain and repair all Concession Premises and operating equipment in
6 accordance with: (i) applicable building codes (for terminal facilities), Health
7 Department regulations and other applicable rules and regulations; and (ii)
8 instructions issued by authorized **WSF** personnel. Prior to conducting any
9 maintenance or repair to the Concession Premises, contact the **WSF** Terminal
10 Agent or **WSF** Vessel Staff Chief Engineer (as applicable) on duty and obtain
11 written permission to proceed. Upon completion, obtain review and approval
12 by **WSF**.
13

14 5. Immediately carry out all written requests by authorized **WSF** personnel to
15 correct **CONCESSIONAIRE** deficiencies in safety or sanitation. Such
16 deficiencies not immediately remedied may be corrected by **WSF** at the
17 expense of the **CONCESSIONAIRE**.
18

19 B. **WSF** will not tolerate any condition on the Concession Premises that has an adverse
20 effect on personal safety. Accordingly, the **CONCESSIONAIRE** shall be solely
21 responsible for the prompt maintenance and repair of everything on the Concession
22 Premises to the satisfaction of **WSF**.
23
24

25 **XI.**

26 **UTILITIES**

27

28 A. **WSF**, at its expense, shall furnish the basic utility systems to the Concession
29 Premises, including but not limited to, adequate quantities of available cold water and
30 electricity; **Provided**, availability of such utilities is subject to the limitation of the
31 individual vessels and terminals; and **Provided further**, **WSF** shall not be liable
32 whatsoever for any interruption of utility service to the Concession Premises.
33

34 B. The **CONCESSIONAIRE'S** utility usage shall be limited to that necessary to
35 perform the provisions of this Contract. Any changes that may be required in any
36 utility system provided to the Concession Premises to fulfill the purpose of this

1 Contract and provide the services required herein must be approved in advance by
2 **WSF**.

3
4 C. The **CONCESSIONAIRE** shall maintain all utility connections to the equipment on
5 the Concession Premises and, to the maximum extent possible, keep the utility
6 systems free of obstructions and damage resulting from the **CONCESSIONAIRE'S**
7 operations.

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9

10 **XII.**
11 **ENTRY FOR INSPECTION**

12

13 A. The **CONCESSIONAIRE** shall permit any duly authorized **WSF** personnel or
14 consultants, or any duly authorized federal, state or municipal officer to enter onto the
15 Concession Premises at all reasonable times, and without prior notice, for: (i)
16 inspection of the Premises for operations, safety or sanitation; (ii) maintenance, repair
17 or construction work; (iii) response to fire or other emergency; and (iv) conducting
18 service / performance audits and verification of Contract compliance.

19

20 B. **WSF** shall not be liable for any claim for loss, damage, inconvenience or interruption
21 of business arising from any of the above-referenced inspection activities. Further,
22 the right of inspection reserved hereunder shall impose no obligation on **WSF** to
23 make inspections and shall impose no liability upon **WSF** for failure to do so.

24

25

26 **XIII.**
27 **SIGNS AND ADVERTISING**

28

29 A. The **CONCESSIONAIRE** may install concession identification signs and notices
30 (electrical or otherwise) on the exterior of the Concession Premises; **Provided**, such
31 signs must be appropriately designed for the location; and **Provided further**, the
32 **CONCESSIONAIRE** shall not install any sign or notice without obtaining **WSF'S**
33 prior approval as to its design, message and location. Installations at any other vessel
34 or terminal locations shall be within **WSF'S** sole discretion.

35

- 1 B. No promotion or trade stimulation materials of any kind, including but not limited to
2 any brochure, map, flyer, sign or insignia, shall be displayed, distributed or placed
3 upon the Concession Premises without **WSF'S** prior approval.
4
5

6 **XIV.**
7 **ACCESS TO PREMISES**
8

- 9 A. Subject to the conditions specified herein, the **CONCESSIONAIRE** shall have
10 unrestricted access to the Concession Premises as necessary to fulfill the terms of this
11 Contract; **Provided**, such rights shall not be exercised in such manner and to such
12 extent as to: (i) impede or interfere with the operation of **WSF** terminals and vessels
13 or business conducted by other **WSF** concessionaires or authorized occupants; or (ii)
14 violate any lease or agreement entered into between **WSF** and a third party.
15
16 B. Subject to: (i) availability of parking, and (ii) the prior approval of the appropriate
17 Terminal Agent, **WSF** shall permit the **CONCESSIONAIRE'S** service vehicles to
18 park free at **WSF** terminals, but only for the minimum time necessary for the
19 **CONCESSIONAIRE'S** delivery / pick-up of products and supplies for its
20 concession operations, or maintenance or repair of the Concession Premises.
21
22

23 **XV.**
24 **VESSEL PASSES AND PARKING**
25

- 26 A. **Vessel Passes**
27 In the performance of this Contract, there are no passes authorized for free vehicle or
28 walk-on passage on any **WSF** vessel. This policy applies to the
29 **CONCESSIONAIRE'S** employees and supervisory personnel working at any of the
30 Concession Premises, regardless of location.
31
32 B. **Parking**
33 Generally, there is no parking at any **WSF** terminal for **CONCESSIONAIRE**
34 personnel. However, subject to space availability and demonstrated need, **WSF** may
35 authorize the **CONCESSIONAIRE'S** service vehicles to park free at an authorized

1 Terminal, during renovation, maintenance or repair of the Concession Premises, or
2 delivery / pick-up of supplies for the concession facility thereon.
3
4

5 **XVI.**

6 **PROTECTION OF PROPERTY AND SAFETY**
7

8 A. The **CONCESSIONAIRE** shall:
9

- 10 1. At its sole expense, provide protection for its own property at all times,
11 including inventory, fixtures, and equipment. **WSF** shall have no
12 responsibility for protection of the **CONCESSIONAIRE'S** property, or any
13 liability for loss or theft thereof.
14
- 15 2. At no time permit any fire hazards to exist in regard to wiring of the
16 concession facilities and equipment, or through the accumulation of waste or
17 refuse on or adjacent to the Concession Premises; and immediately report to
18 **WSF** fires or unsafe conditions on the Concession Premises.
19
- 20 3. At no time permit liquids or other substances of a slippery or dangerous nature
21 arising from its operations to accumulate anywhere such substances might
22 result in accident or injury to the **CONCESSIONAIRE'S** or the **WSF'S**
23 patrons and/or employees. Should **WSF** desire that the **CONCESSIONAIRE**
24 use only **WSF** specified brands cleaning supplies and cleaning agents, **WSF**
25 shall assume the liability for the appropriateness of each supply item or
26 cleaning agent for its intended use.
27
- 28 4. Inspect and maintain the Concession Premises to prevent loss or damage to
29 **WSF** or other non-**CONCESSIONAIRE** property, or accident or injury
30 arising from the **CONCESSIONAIRE'S** operations. If any intentional or
31 negligent defacement or damage of **WSF** property is caused by the
32 **CONCESSIONAIRE**, its employees or subcontractors, the cost of repair
33 shall be the sole responsibility of the **CONCESSIONAIRE**.
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XVII.
DAMAGE TO PREMISES

A. If, during the Contract term, the Concession Premises or any **WSF** terminal of which the Concession Premises are a part is damaged by fire or other casualty not occurring through the **CONCESSIONAIRE'S** performance of this Contract, and if such damage is repairable within a reasonable time and at a reasonable cost, **WSF** and the **CONCESSIONAIRE** shall repair such damage to their respective property, with due diligence, and this Contract shall not be affected thereby.

B. If, during the Contract term, the Concession Premises or any **WSF** terminal of which the Concession Premises are a part is damaged by fire or other casualty not occurring through the **CONCESSIONAIRE'S** performance of this Contract, and if such damage is so extensive that it cannot be repaired within a reasonable time and at a reasonable cost, **WSF** shall have the option to terminate this Contract as to the Concession Premises at such damaged terminal upon thirty (30) days' prior written notice, effective as of a date not more than sixty (60) days after the occurrence. If **WSF** shall fail to timely notify the **CONCESSIONAIRE** of its election, then, unless the parties agree otherwise, this Contract shall automatically terminate as to such Concession Premises sixty (60) days after the occurrence of the damage.

In the event of such termination, with or without notice: (i) the **CONCESSIONAIRE** shall immediately surrender the subject Concession Premises to **WSF**; (ii) **WSF** shall have no liability to the **CONCESSIONAIRE** for any lost profits or interruption / loss of business resulting from such termination; and (iii) this Contract shall remain in full force and effect as to the remainder of the Concession Premises.

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XVIII.
CHANGES TO PREMISES AND VESSEL SERVICE

A. Changes to Concession Premises

1. **WSF** has a primary obligation to operate the **WSF** for the benefit of its customers and their vehicles. In order to accomplish this obligation, it may be necessary for **WSF**, at some time or times during the term hereof, to make changes in the Concession Premises. If and when such changes become necessary, the parties will mutually cooperate in implementing such changes in order to minimize any disruption in **WSF** or **CONCESSIONAIRE** operations.
2. **WSF** shall not be liable for any **CONCESSIONAIRE** loss, damage, inconvenience or interruption of business, anticipatory lost profits or consequential damages arising from: (i) changes to the Concession Premises as deemed necessary by **WSF**; (ii) asbestos removal at any **WSF** terminal; (iii) the remodel or refurbishment of any ferry terminal; and/or (iv) any other improvements / renovations whether or not they are associated with **WSF** actions.

B. Changes in Vessel and Routes

1. In the event **WSF** is prevented from maintaining its vessel sailing schedules or providing operational Concession Premises due to strike, riot, weather, vessel break-down or repair, security measures, or any other causes whatsoever, **WSF** shall not be liable for any damage, loss or increase in operating cost sustained by the **CONCESSIONAIRE** by reason thereof. **WSF** also reserves the right, without liability for any damage, loss or increase in operating cost, to discontinue, increase or reduce the operation of its terminals and vessels at any time or times as it may see fit. **WSF** may also substitute another vessel or vessels in place of any one or more of its vessels on any route.

- 1
- 2 2. **WSF** will use reasonable best efforts to promptly notify the
- 3 **CONCESSIONAIRE** of any such changes in terminal and/or vessel
- 4 operations. Despite any and all such changes in service and possible lack of
- 5 notice to the **CONCESSIONAIRE**, the **CONCESSIONAIRE** shall remain
- 6 obligated to provide the concession services defined herein to the extent that it
- 7 remains possible to do so.
- 8

9 **C. Future Capital Projects**

10

11 1. **Colman Dock –Pier 52 Ferry Terminal**

12 The Colman Dock – Pier 52 Ferry Terminal is scheduled for replacement

13 within the next ten (10) years. Currently, construction is planned to start

14 during the 2007-2009 Biennium with completion scheduled during the 2011-

15 2013 Biennium. The planning is in a preliminary stage and these dates

16 represent the earliest start and completion dates for a complex project with

17 significant regulatory and environmental requirements.

18

19 During construction, the Terminal will not close but there may be disruptions.

20 **WSF** will make reasonable efforts to keep concessions in operation during the

21 construction period, to minimize negative business impacts on the

22 **CONCESSIONAIRE** when reasonably possible.

23

24 **WSF** will not be liable to the **CONCESSIONAIRE** for any damages

25 whatsoever arising from any disruption in customer access or reduced

26 revenues resulting from the Colman Dock construction project.

27

28 2. **Alaskan Way Viaduct**

29 The Alaska Way Viaduct, an elevated highway, borders the Colman Dock

30 Terminal to the east. The Viaduct is slated for replacement to begin within

31 the period of this Contract. This is a very complex project in the early stages

32 of planning and with many uncertainties. The Colman Dock Ferry Terminal

33 will remain in operation throughout any construction period but the

34 surrounding area could be subject to construction zone conditions.

35

WSF will not be liable to the **CONCESSIONAIRE** for any damages whatsoever arising from any disruption in customer access or reduced revenues resulting from the Alaskan Way Viaduct project.

3. Anacortes Ferry Terminal

The Anacortes Ferry Terminal is scheduled for replacement within the next ten (10) years. Currently, construction is planned to start during the 2007-2008 Biennium. The planning is in a preliminary stage and these dates represent the earliest start dates for a complex project with significant regulatory and environmental requirements. An expanded retail concession presence is planned for the new facility.

During construction, the Terminal will not close but there may be disruptions. **WSF** will make reasonable efforts to keep concessions in operation during any construction period, to minimize negative business impacts on the **CONCESSIONAIRE** when reasonably possible.

WSF will not be liable to the **CONCESSIONAIRE** for any damages whatsoever arising from any disruption in customer access or reduced revenues resulting from the Anacortes Terminal construction project.

XIX.
ASSIGNMENT, SUB-CONTRACT

A. General

Notwithstanding the provisions of Paragraph B of this Article, the **CONCESSIONAIRE** shall not assign, delegate or transfer this Contract, or the obligations incurred hereunder, in whole or in part, by operation of law or otherwise, or sub-contract for the management or operation of the concession facilities authorized herein, or parts thereof, without **WSF's** prior written approval. Such approval shall not operate to relieve the **CONCESSIONAIRE** of any of its duties and obligations hereunder, unless specified by **WSF** in writing; nor shall such approval affect any remedies available to **WSF** that may arise from non-performance of the Contract.

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2 **B. Subsidiary or Licensee**

3 Notwithstanding the restrictions in Paragraph A above, the **CONCESSIONAIRE**
4 may, without **WSF** approval, sublease or assign this Contract to a fully owned
5 subsidiary or licensee of the **CONCESSIONAIRE**. In such event, the
6 **CONCESSIONAIRE** shall remain liable for: (i) the payment of all concession fees
7 in accordance with the concession fee schedule specified in Article XXIV herein; and
8 (ii) the performance of all terms, covenants and conditions of this Contract.
9

10 **C. Subcontracted Services**

11 If **WSF** authorizes the **CONCESSIONAIRE** to subcontract any concession services
12 under this Contract, the **CONCESSIONAIRE** and the subcontractor shall abide by
13 the applicable service provisions in the RFP and this Contract. The subcontractor
14 shall indicate such willingness in writing. For all subcontracted services, the
15 **CONCESSIONAIRE** shall pay **WSF** the same concession fees applicable to non-
16 subcontracted services, in accordance with the concession fee schedule specified in
17 Article XXIV herein.
18

19 **D. M/WBE Participation**

20 This Contract has voluntary goals for participation by Minority Business Enterprises
21 (MBE's) and Women's Business Enterprises (WBE's) in the purchase of products,
22 supplies and/or services. The goals are voluntary, but achievement of the goals is
23 encouraged. The participation goals are as follows:

- 24 1. Ten percent (10%) to State-certified MBEs, based upon the
25 **CONCESSIONAIRE'S** annual expense for the procurement of products,
26 supplies and/or services; and
- 27 2. Six percent (6%) to State-certified WBEs, based upon the
28 **CONCESSIONAIRE'S** annual expense for the procurement of products,
29 supplies and/or services.
30

31 **WSF** shall monitor the **CONCESSIONAIRE'S** compliance with the MBE and WBE
32 goals to ascertain level of achievement and demonstrated good faith effort.
33
34

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2 **XX.**

3 **TAXES AND ASSESSMENTS**
4

- 5 A. The **CONCESSIONAIRE** shall be liable for, and shall pay throughout the term of
6 this Contract: (i) all taxes (e.g., sales tax) payable for or on account of the retail sales
7 generated under this Contract; (ii) all taxes (including personal property tax, B & O
8 tax, leasehold tax and any other such taxes), assessments and license fees, if any,
9 payable for or on account of the **CONCESSIONAIRE'S** use and occupancy of the
10 Concession Premises; (iii) all taxes on the **CONCESSIONAIRE'S** equipment
11 installed on **WSF** property pursuant to this Contract; and (iv) any taxes levied on, or
12 measured by, the concession fees payable hereunder.
13
- 14 B. The **CONCESSIONAIRE** shall reimburse **WSF** for all such taxes paid or payable by
15 **WSF**. With respect to any tax on the concession fee payments hereunder, the
16 **CONCESSIONAIRE** shall pay to **WSF** with each fee payment an amount equal to
17 such tax on that particular payment. All other tax amounts for which **WSF** is or will
18 be entitled to reimbursement from the **CONCESSIONAIRE** shall be payable by the
19 **CONCESSIONAIRE** to **WSF** at least fifteen (15) calendar days prior to the due
20 dates of the respective tax amounts involved.
21
- 22 C. Notwithstanding the foregoing, the **CONCESSIONAIRE** shall have the right to
23 challenge any levied taxes or assessments relating to the services provided pursuant to
24 this Contract.
25
26

27 **XXI.**

28 **CONTRACT SECURITY**
29

- 30 A. The **CONCESSIONAIRE**, at its own expense, shall deliver to **WSF** and maintain in
31 good standing throughout the term of this Contract, and for sixty (60) days thereafter,
32 Contract Security in the form of a surety Contract Bond or an Irrevocable Letter of
33 Credit (ILOC) in the amount of _____ Thousand Dollars (\$_____)
34 covering the **CONCESSIONAIRE'S** performance and payment obligations under
35 this Contract, and issued by a State-approved, properly licensed surety company or
36 bank, respectively, on a form acceptable to **WSF**.

1
2 B. Notwithstanding such Contract Security, the **CONCESSIONAIRE** shall not be
3 relieved of, and shall reimburse **WSF** for, any loss or additional expense incurred by
4 **WSF** as a result of the **CONCESSIONAIRE'S** default or failure to satisfactorily
5 perform the terms of this Contract, including a sum for reasonable attorney's fees if
6 litigation shall be instituted hereon and **WSF** prevails in such litigation or on appeal.
7

8 C. If the **CONCESSIONAIRE** substantiates to the satisfaction of **WSF** that the
9 Contract Bond or ILOC required herein is unattainable or is less comprehensive than
10 alternate security proposed by the **CONCESSIONAIRE**, **WSF** may, in its sole
11 discretion, authorize the **CONCESSIONAIRE** to procure and maintain substitute
12 security acceptable to **WSF**.
13
14

15 **XXII.**

16 **INSURANCE**

17

18 A. At its sole expense, the **CONCESSIONAIRE** shall procure the insurance required
19 under "Types of Insurance" in this Article. Such insurance shall cover injury to
20 persons and/or property suffered by **WSF** or a third party, as a result of performance
21 of the Contract by the **CONCESSIONAIRE** or by any subcontractor. This coverage
22 shall also provide protection against injuries to all employees of the
23 **CONCESSIONAIRE** and the employees of any subcontractor. The required
24 insurance shall be provided by companies or through sources approved by the
25 Washington State Insurance Commissioner pursuant to Chapter 48.05 RCW.
26

27 B. Evidence of insurance shall be furnished to **WSF** prior to execution of the Contract.
28 Such evidence, executed by the carrier's representative and issued to **WSF**, shall
29 consist of an ACORD form Certificates of Insurance evidencing the minimum
30 insurance coverages required under this Article. Acceptance by **WSF** of deficient
31 evidence does not constitute a waiver of Contract requirements.
32

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2 C. **Types of Insurance**
3

- 4 1. Commercial General Liability Insurance written under ISO form CG0001,
5 or its equivalent, with minimum limits of \$1,000,000 each occurrence and
6 \$2,000,000 in the aggregate for each policy year. Products and completed
7 operations coverage shall be provided for a period of one (1) year following
8 expiration or earlier termination of the Contract.
9

10 The Commercial General Liability insurance shall include coverage for the
11 performance of all concession services under the Contract. Such insurance
12 shall cover all operations by, or on behalf of, the **CONCESSIONAIRE**
13 including all operations by a subcontractor. Such insurance shall cover:
14 bodily injury and property damage liability, including coverage for premises
15 and operations; products and completed operations; contractual liability;
16 broad form property damage, including property in the
17 **CONCESSIONAIRE'S** care, custody and control; and personal injury
18 liability. **WSF** shall be named as an additional insured in connection with
19 the **CONCESSIONAIRE'S** performance of the Contract.
20

- 21 2. Commercial Automobile Liability Insurance providing bodily injury and
22 property damage liability coverage for all owned and non-owned vehicles
23 assigned to or used in the performance of the Contract, for a combined
24 single limit of not less than \$1,000,000 each occurrence. **WSF** shall be
25 named as an additional insured in connection with the
26 **CONCESSIONAIRE'S** performance of the Contract.
27

- 28 3. Worker's Compensation Insurance for the **CONCESSIONAIRE'S**
29 employees engaged in performance of the Contract, as required by State
30 law. The **CONCESSIONAIRE** shall be responsible for Workers'
31 Compensation Insurance for any Subcontractor who provides services under
32 the Contract.
33

- 34 4. United States Longshore and Harbor Workers' (U.S. L&H) Insurance and
35 contingent coverage for Jones Act (Marine Employers Liability) in
36 compliance with Federal Statutes, as applicable.

- 1
- 2 D. All insurance policies and Certificates of Insurance shall include a requirement
- 3 providing for a minimum of forty five (45) days' prior written notice to **WSF** of any
- 4 cancellation or reduction of coverage.
- 5
- 6 E. The **CONCESSIONAIRE'S** failure to maintain the insurance as required shall
- 7 constitute a material breach of Contract upon which **WSF** may, after giving five (5)
- 8 working days' notice to the **CONCESSIONAIRE** to correct the breach, immediately
- 9 terminate the Contract or, at its discretion, procure or renew such insurance and pay
- 10 any and all premiums in connection therewith, with any sums so expended to be
- 11 repaid to **WSF** on demand.
- 12
- 13 F. Upon written request from **WSF**, following a claim that may result in the
- 14 **CONCESSIONAIRE'S** indemnification obligation, the **CONCESSIONAIRE** shall
- 15 provide to **WSF** copies of the policies required under this Article within five (5)
- 16 working days after the request.
- 17
- 18 G. If the **CONCESSIONAIRE** has not fully complied with the insurance requirements
- 19 in this Article, **WSF** may take any action available to it under any other provisions of
- 20 the Contract, or as otherwise provided in law.
- 21
- 22 H. The insurance coverage and other requirements in this Article shall not limit the
- 23 **CONCESSIONAIRE'S** responsibilities under this Contract including, but not
- 24 limited to, duties of liability and indemnity.
- 25
- 26

27 **XXIII.**

28 **INDEMNIFICATION**

29

- 30 A. At its own expense, the **CONCESSIONAIRE** hereby agrees to indemnify and hold
- 31 harmless **WSF**, its, officers, agents, employees and assigns, from and against all
- 32 claims, demands, losses, costs, penalties, damages, judgments and suits at law or in
- 33 equity, of whatsoever nature ("actions"), brought against **WSF** arising from, in
- 34 connection with, or incident to the performance of, or failure to perform, the
- 35 provisions of this Contract by the **CONCESSIONAIRE**, its officers, agents,
- 36 employees or assigns. The **CONCESSIONAIRE** further agrees to defend **WSF** in

1 any litigation, including payment of any costs or attorney's fees, for any claims or
2 action commenced thereon arising out of or in connection with such acts or activities
3 authorized by this Agreement.
4

5 This indemnity obligation shall not include such claims, costs, damages or expenses
6 that may be caused by the sole negligence of **WSF**. Additionally, if the claims or
7 damages are caused by or result from the concurrent negligence of (a) the
8 **CONCESSIONAIRE**, its officers, agents, employees or assigns and (b) **WSF**, its
9 officers, agents, employees or assigns, and involve those actions covered by RCW
10 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of
11 the negligence of the **CONCESSIONAIRE** or that of its officers, agents, employees
12 or assigns.
13
14

15 **XXIV.** 16 **PAYMENT** 17

18 In exchange for the concession rights granted herein, the **CONCESSIONAIRE** agrees to
19 abide by the following payment provisions during the term of this Contract:
20

21 **A. Concession Fees** 22

23 1. For each full or partial calendar month of this Contract, the
24 **CONCESSIONAIRE** shall pay to **WSF** a concession fee equal to
25 _____ **Percent (____%) of all gross sales** for the Hot Beverage and
26 Snack Vending service under this Contract.
27

28 2. The minimum monthly concession fee for the Hot Beverage and Snack
29 Vending service shall be the greater of: (i) thirty percent (30%) of gross sales,
30 excluding sales tax; or (ii) \$5,000 unless the **CONCESSIONAIRE** proposes
31 and **WSF** accepts a higher concession fee. Effective at the beginning of
32 Contract year three, the minimum monthly concession fee will be Eighty
33 Percent (80%) of the average of the two (2) previous years of concession fees.
34

1
2 3. For concessions at **WSF** Terminals that require facility construction, the
3 concession fee obligation will commence on the scheduled date for
4 commencement of the concession operations, as agreed to in advance by **WSF**
5 and the **CONCESSIONAIRE**.
6

7 4. The term "gross sales" as used herein shall mean the total dollar amount of
8 sales made with respect to the **CONCESSIONAIRE'S** operations conducted
9 in or from the Concession Premises, whether such activities shall be operated
10 by the **CONCESSIONAIRE** or by any subcontractor, or under any other
11 arrangement authorized by **WSF**, excluding, however, any sales or excise
12 taxes which are chargeable against the customer by the **CONCESSIONAIRE**
13 or by the subcontractor, if any, and further excluding refunds. Such gross
14 sales shall include all sales, whether at retail or otherwise, cash or credit,
15 irrespective of whether or not credit accounts are collected.
16

17 **B. Other Service Contracts**

18 During the term of this Contract, **WSF** intends to implement other concession
19 services under separate contracts outside the scope of this Contract. Such services
20 may include:

- 21 1. on-board food, beverage and retail service;
22 2. on-shore food and beverage service;
23 3. on-shore news, book and convenience stores;
24 4. on-shore fast food service;
25 5. on-board and on-shore cold beverage vending machine service;
26 6. on-board and on-shore game machines; and
27 7. other on-board and/or on-shore retail services.
28

29 In the event **WSF** implements any or all of these other concession services, **WSF** will
30 not consider any reduction in concession fees under this Contract.
31

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2 C. **Due Date**

3 For each calendar month of this Contract, the **CONCESSIONAIRE** shall pay all
4 funds owed to **WSF** no later than the fifteenth (15th) calendar day of the following
5 month, addressing such payment to: Revenue Accountant, Washington State Ferries,
6 P.O. Box 3985, Seattle, Washington 98124-3985. Checks should be made payable to
7 Washington State Ferries, and each payment shall be accompanied by a financial
8 statement pursuant to Article XXV.
9

10 At some time during the term of this Contract, **WSF** may, in its sole discretion,
11 authorize the use of wire transfer or other method of electronic payment, if allowed
12 by the **WSF** accounting system.
13

14 D. **Interest**

15 The **CONCESSIONAIRE** shall pay interest monthly at the annual rate of twelve
16 percent (12%), or the maximum rate permitted by applicable law, whichever is less,
17 on all sums owing to **WSF** under this Contract, commencing on the date the same is
18 first due and payable.
19
20

21 **XXV.**
22 **REPORTS**
23

24 A. The **CONCESSIONAIRE** shall prepare and submit to **WSF**: (i) a monthly financial
25 statement signed by the CFO or Controller, in the form and format specified by **WSF**
26 including detail and sequence of items, to be submitted with the monthly concession
27 fee; (ii) reports of operating statistics as requested by **WSF**; and (iii) reports of any
28 subcontractors operating under the Contract. All such reports shall be available to
29 **WSF** in electronic format.
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XXVI.
ACCOUNTING PROCEDURES

- A. The **CONCESSIONAIRE** shall adopt bookkeeping or accounting methods that will, in the opinion of **WSF**, comply with generally accepted accounting principles and accurately disclose the **CONCESSIONAIRE'S** income and operating costs under this Contract. If requested by **WSF**, the **CONCESSIONAIRE**, at its sole expense, shall provide **WSF** an external certified public accountant's audit report on all of the **CONCESSIONAIRE'S** concession services provided during the preceding Contract year or the **CONCESSIONAIRE'S** most recent fiscal year.
- B. The **CONCESSIONAIRE** shall make available for inspection all of its concession operation books, accounts and records as may be reasonably required for audit purposes. Such records shall be made available to **WSF** in Seattle for inspection and audit at all reasonable times during the term of this Contract and for three (3) years after final payment hereunder; **Provided**, if any litigation, claim or audit is started before expiration of this three (3) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The **CONCESSIONAIRE** shall also permit **WSF** to check receipts from the **CONCESSIONAIRE'S** cash registers during such period.
- C. If at any time during the Contract term **WSF** requests reasonable changes in format, type or detail of accounting data, the **CONCESSIONAIRE** shall make the requested adjustments at no cost to **WSF**.

XXVII.
NON-DISCRIMINATION

A. Customers

Subject to applicable laws or regulations, the **CONCESSIONAIRE** agrees that no person, on the grounds of race, color, creed, national origin, marital status, age, sex, or the presence of any sensory, mental or physical handicap shall be denied the benefits of, or be otherwise unlawfully subjected to discrimination in their access to and use of the vending equipment on the Concession Premises.

B. Title VI

During the performance of this Contract, the **CONCESSIONAIRE**, for itself, its assignees and successors in interest, agrees as follows:

1. Compliance With Regulations

The **CONCESSIONAIRE** shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (hereinafter referred to as USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

2. Nondiscrimination

The **CONCESSIONAIRE**, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The **CONCESSIONAIRE** shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

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2 3. Solicitations for Subcontracts, Including Procurement of Materials and
3 Equipment

4 In all solicitations either by competitive bidding or negotiations made by the
5 **CONCESSIONAIRE** for work to be performed under a subcontract,
6 including procurement of materials or leases of equipment, each potential
7 subcontractor or supplier shall be notified by the **CONCESSIONAIRE** of the
8 **CONCESSIONAIRE'S** obligations under this Contract and the Regulations
9 relative to nondiscrimination on the ground of race, color, sex, or national
10 origin.

11 4. Information and Reports

12 The **CONCESSIONAIRE** shall provide all information and reports required
13 by the Regulations or directives issued pursuant thereto, and shall permit
14 access to its books, records, accounts, other sources of information, and its
15 facilities as may be determined by the Washington State Department of
16 Transportation or the USDOT to be pertinent to ascertain compliance with
17 such Regulations, orders and instructions. Where any information required of
18 the **CONCESSIONAIRE** is in the exclusive possession of another who fails
19 or refuses to furnish this information, the **CONCESSIONAIRE** shall so
20 certify to the Washington State Department of Transportation, or the USDOT,
21 as appropriate, and shall set forth what efforts it has made to obtain the
22 information.

23 5. Sanctions for Noncompliance

24 In the event of the **CONCESSIONAIRE'S** noncompliance with the
25 nondiscrimination provisions of this Contract, the Washington State
26 Department of Transportation shall impose such Contract sanctions as it or the
27 USDOT may determine to be appropriate, including, but not limited to:

28
29 a. Imposition of fines or other financial remedies under the
30 Contract until the **CONCESSIONAIRE** complies, and/or;

31 b. Cancellation, termination, or suspension of the Contract, in
32 whole or in part.

1 6. Incorporation of Provisions

2 The **CONCESSIONAIRE** shall include the provisions of paragraphs 1
3 through 5 in every subcontract, including procurement of materials and leases
4 of equipment, unless exempt by the Regulations, or directives issued pursuant
5 thereto.

6 The **CONCESSIONAIRE** shall take such action with respect to any
7 subcontractor or procurement as the Washington State Department of
8 Transportation or the USDOT may direct as a means of enforcing such
9 provisions including sanctions for noncompliance; Provided, however, that in
10 the event the **CONCESSIONAIRE** becomes involved in, or is threatened
11 with, litigation with a subcontractor or supplier as a result of such direction,
12 the **CONCESSIONAIRE** may request the Washington State Department of
13 Transportation to enter into such litigation to protect the interests of the state
14 and, in addition, the **CONCESSIONAIRE** may request the United States to
15 enter into such litigation to protect the interests of the United States.

16
17 D. The **CONCESSIONAIRE** shall use the Concession Premises in compliance with all
18 other requirements imposed pursuant to any federal, state or municipal laws or
19 regulations on discrimination.

20
21 E. The breach of any of the above non-discrimination covenants shall be a material act
22 of default entitling **WSF** to terminate this Contract in accordance with the procedures
23 set forth herein.
24

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2 **XXVIII.**
3 **DISPUTES**
4

5 A. **Administrative Review**

6 **WSF** and the **CONCESSIONAIRE** shall make a good faith effort to resolve any
7 dispute arising under this Contract. Any such dispute which is not resolved by
8 agreement between the parties shall be submitted in writing to **WSF's** Director / CEO
9 for administrative review. After giving full consideration to both parties' positions,
10 the Director / CEO shall issue a written, reasoned decision and mail or otherwise
11 furnish a copy thereof to both parties. The decision of the Director / CEO shall be
12 final and conclusive subject to the provisions in Paragraph B below. Pending the
13 administrative decision of a dispute hereunder, the **CONCESSIONAIRE** shall
14 proceed diligently with the performance of this Contract.
15

16 This administrative review process is an express condition precedent to the institution
17 of mediation pursuant to Paragraph B below.
18

19 B. **Mediation**

20 If either **WSF** or the **CONCESSIONAIRE** wishes to appeal an administrative
21 decision issued pursuant to Paragraph A above, it may not bring any claim against the
22 other party unless the claim is first presented for non-binding mediation before a
23 single mediator under the applicable Mediation Rules of the American Arbitration
24 Association. A representative of **WSF** and a representative of the
25 **CONCESSIONAIRE**, both having full authority to settle the claim, must attend the
26 mediation session. This provision requiring pre-filing mediation shall be
27 incorporated by reference in all agreements between the **CONCESSIONAIRE** and
28 its sub-contractors and suppliers. To the extent that any of the sub-contractors or
29 suppliers has any interest in the claim, their representatives, with full authority to
30 settle a claim on their behalf, shall also attend the mediation session.
31

32 Mediation is an express condition precedent to the institution of a claim on any
33 dispute arising under this Contract.
34

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2 **C. Standard of Review**

3 On an appeal of any dispute resolution pursuant to Paragraph A above, **WSF** and the
4 **CONCESSIONAIRE** agree that the standard of review shall be whether the
5 administrative decision was arbitrary and capricious.
6
7

8 **XXIX.**

9 **FINES AND TERMINATION**

10
11 **A. Fines For Non-performance**

12 **WSF** may impose on the **CONCESSIONAIRE** fines not to exceed Five Hundred
13 Dollars (\$500.00) per violation per day (for each location where the violation
14 occurred), for the **CONCESSIONAIRE'S** or its subcontractor's failure to take
15 corrective action on a material breach of this Contract. Before any such fine may be
16 assessed, **WSF** shall issue a written notice to the **CONCESSIONAIRE**, specifying
17 the exact nature of the breach, the corrective action to be taken, and a reasonable
18 period of time in which to respond and complete such action. If the
19 **CONCESSIONAIRE** does not fully comply with the notice, without reasonable
20 justification, then **WSF** shall issue a written fine, payable with the next monthly
21 concession fee.
22

23 There shall be no limitation on the number and frequency of such fines, including
24 subsequent, cumulative fines for the same breach, if not timely corrected. All such
25 breaches which are not timely corrected shall be sufficient cause, singularly and
26 cumulatively, for default termination of this Contract, if deemed necessary by **WSF**.
27 Any such fine shall not be a prerequisite to, nor shall it affect, any other available
28 remedy arising from the **CONCESSIONAIRE'S** breach of this Contract.
29

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2 **B. Termination for Default**

3
4 1. Notice of Default

5 **WSF**, by prior written notice, may terminate this Contract, in whole or in part,
6 for failure of the **CONCESSIONAIRE** to perform any material provision of
7 this Contract. Such notice shall specify the default(s) then outstanding, and
8 shall provide advance notice equal to the longer of: (i) fourteen (14) calendar
9 days; or (ii) a period of time determined by **WSF** as reasonably necessary to
10 remedy the default(s). **WSF'S** acceptance of **CONCESSIONAIRE'S**
11 payment or services for any period or periods after a default by the
12 **CONCESSIONAIRE** hereunder shall not be deemed a waiver of such default
13 unless **WSF** shall so intend and shall so advise the **CONCESSIONAIRE** in
14 writing. No waiver by **WSF** of any **CONCESSIONAIRE** default hereunder
15 shall be construed to be or act as a waiver of any subsequent default by the
16 **CONCESSIONAIRE**.

17
18 2. Termination and Extension

19 After the expiration of the default notice period, if one or more of the defaults
20 described in such notice then remains unremedied, this Contract shall
21 terminate without further notice and all rights of the **CONCESSIONAIRE**
22 shall cease. **WSF** may, in writing and at its option, extend the above period if,
23 in the sole judgment of **WSF**, an extension is justified.
24

25 3. Assignment for Benefit of Creditors, Insolvency, or Bankruptcy

26 To the extent permissible by law, appointment of a receiver to take possession
27 of the **CONCESSIONAIRE'S** assets, the **CONCESSIONAIRE'S**
28 assignment for benefit of creditors, or the **CONCESSIONAIRE'S** insolvency
29 or taking or suffering action under any Bankruptcy Act is a breach of this
30 Contract entitling **WSF** to terminate this Contract in accordance with the
31 provisions herein.
32

1
2 4. Performance by WSF

3 Notwithstanding the provisions in Paragraph B.1, if the **CONCESSIONAIRE**
4 defaults in the performance of any material provision of this Contract, and if
5 **WSF** deems that an emergency exists as a direct result of such default, **WSF**
6 may: (i) immediately terminate this Contract, in whole or in part, effective
7 upon the **CONCESSIONAIRE'S** receipt of written notice thereof; and (ii)
8 perform or cause to be performed such Contract provision(s). In such case,
9 **WSF** shall not be liable for damages by reason of such termination or entry
10 onto the Concession Premises. **WSF** may also avail itself of any other remedy
11 provided by law. Emergencies hereunder include, but are not limited to:
12 endangerment of life or property; failure to timely obtain insurance or
13 Contract Security, or failure to pay any taxes required by this Contract.
14

15 5. Damages

16 In the event **WSF** terminates this Contract, in whole or in part, for failure of
17 the **CONCESSIONAIRE** to perform a material provision herein, the
18 **CONCESSIONAIRE** shall be liable for Contract payments owed **WSF** to the
19 effective date of termination, plus **WSF'S** damages and expenses, including
20 but not limited to the additional cost, if any, of substitute, comparable
21 services, and the reduced revenues, if any, to **WSF**.
22
23

24 **XXX.**

25 **REDELIVERY OF PREMISES**

26
27 A. Upon the expiration or earlier termination of this Contract, the **CONCESSIONAIRE**
28 shall:
29

- 30 1. Immediately quit and surrender the Concession Premises and any other **WSF**
31 property in a systematic and orderly manner and redeliver such Premises and
32 property to **WSF** in as good state and condition as they were at the
33 commencement of the **CONCESSIONAIRE'S** operations under this
34 Contract, except for: (i) ordinary wear and tear; and (ii) damage not caused,
35 in whole or in part, by the **CONCESSIONAIRE'S** operations under this
36 Contract.

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2. Unless otherwise agreed upon between the parties, remove from the Concession Premises the **CONCESSIONAIRE'S** personal property that is removable without causing damage to the Concession Premises or any other **WSF** property or facilities thereon. Title to any such items left on the Concession Premises after ten (10) days following expiration or earlier termination of this Contract shall pass automatically to **WSF**; **Provided**, this provision shall not apply to any of the **CONCESSIONAIRE'S** personal property which **WSF** may allow to remain on the Concession Premises pending sale to a successor concessionaire; but if such sale is not completed within reasonable time, or upon earlier notice from **WSF**, the **CONCESSIONAIRE** shall immediately remove all such personal property from the Concession Premises and restore such Premises, as necessary.
3. Remain fully liable for (ii) all clean-up resulting from the close-out activities specified in this Article; and (ii) the cost of restoring the Concession Premises and any other **WSF** property to the condition specified in Paragraph A.1.

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XXXI.
NOTICE AND APPROVAL

Whenever notice is required to be given under this Contract, it shall be sent, facsimilied, or delivered in writing to the following respective addresses:

WSF: Washington State Ferries
2911 Second Ave.
Seattle, Washington 98121-1012

Attn.: Brian Volkert
Business Development Manager

CONCESSIONAIRE: _____

Attn.: _____

or to such other respective addresses as either party may hereafter designate in writing. Notice sent by mail shall be deemed to have been given three (3) days after proper mailing, and the postmark affixed by the U.S. Post Office shall be conclusive evidence of the date of mailing. Approvals, where required by this Contract, shall be effective in the same manner.

XXXII.
SEVERABILITY

If any term or provision of this Contract or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect.

1
2 **XXXIII.**
3 **GOVERNING LAW**
4

5 This Contract shall be deemed to be made in the County of Thurston, State of Washington,
6 and the legal rights and obligations of **WSF** and the **CONCESSIONAIRE** shall be
7 determined in accordance with the laws of the State of Washington. All legal actions in
8 connection with this Contract shall be brought in the County of Thurston, State of
9 Washington.

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11
12 **XXXIV.**
13 **ENTIRE AGREEMENT**
14

15 A. This Contract, together with all attachments hereto, constitutes the entire agreement
16 between the parties. There are no terms, obligations, covenants or conditions other
17 than those contained herein. No modification or amendment of this Contract shall be
18 valid and effective unless evidenced by an agreement in writing.

19
20 B. To the extent that there is a conflict between this Contract, the
21 **CONCESSIONAIRE'S** Financial Proposal, its Concept / Service Proposal and/or the
22 project RFP package, the provisions of the respective documents shall govern in the
23 following order:

- 24
25 1. This Contract, together with any attachments;
26 2. The project RFP package;
27 3. The **CONCESSIONAIRE's** Financial Proposal; and
28 4. The **CONCESSIONAIRE'S** Concept / Service Proposal
29
30

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2 **IN WITNESS WHEREOF**, the parties hereto have executed this Concession
3 Contract as of the day and year first written above.
4

5
6 **WASHINGTON STATE FERRIES**
7 **Washington State Department of Transportation**
8

9
10 BY: _____
11 Mike Thorne
12 Director / CEO
13
14

15
16 **CONCESSIONAIRE'S NAME**
17

18
19 BY: _____
20 Name
21 Title
22
23
24

25
26 Approved as to Form for WSF:
27

28 BY: _____
29 Andrew Scott
30 Assistant Attorney General
31

32 DATE: _____
33
34

STATE OF _____)
)
COUNTY OF _____) ss

On this day personally appeared before me _____, to me known to be the _____, acting on behalf of _____ the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN UNDER my hand and official seal this _____ day of _____, 2003.

NOTARY PUBLIC in and for the State of
_____, residing at _____.

My Commission Expires: _____

STATE OF WASHINGTON)
)
COUNTY OF KING) ss

On this day personally appeared before me **Michael G. Thorne**, to me known to be the Director / CEO of **WASHINGTON STATE FERRIES**, a division of the Washington State Department of Transportation, the agency that executed the within and foregoing instrument, and acknowledged the said instrument to be a free and voluntary act and deed of said agency for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN UNDER my hand and official seal this _____ day of _____, 2003.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.

My Commission Expires: _____

WASHINGTON STATE FERRIES
HOT BEVERAGE AND SNACK VENDING
CONCESSION CONTRACT

CONTRACT EXHIBITS

<u>Exhibit</u>	<u>Title</u>
A	CONCESSIONAIRE's Financial Proposal (incorporated by reference)
B.	CONCESSIONAIRE's Concept / Service Proposal (incorporated by reference)
C	WSF's Request For Proposals (incorporated by reference)